No. 12,508

IN THE

United States Court of Appeals

For the Ninth Circuit

FRANCISCO BLANCO,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF FOR APPELLEE.

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STATEMENT OF CASE AND SOLE QUESTION INVOLVED.

Appellant alleges he suffered personal injuries as a result of a vehicle accident on May 20, 1948, on the island of Saipan, and that his injuries were caused by the negligence of an enlisted man of the United States Navy.

The Government's motion to dismiss was granted on the ground that the island of Saipan was a foreign country within the purview of the Federal Tort Claims Act, and that the said Act expressly excluded any action against the United States when the cause of action arose in a foreign country.

Hence the sole point on appeal is: "Was the island of Saipan a foreign country within the purview of the Federal Tort Claims Act?"

ADMINISTRATIVE DECISION.

The Secretary of State has administratively declared that Saipan is a foreign country, and if the Secretary of State does not know what is or is not territory of the United States, the political aspect of which is in his department under our system of government, then who is to determine it?

He states in a letter to the Attorney General, with which the appellant is conversant:

> "Saipan is one of the former Japanese mandated islands in the North Pacific Ocean. Those islands were placed under the international trusteeship system of the United Nations by an agreement concluded between the United States and the Security Council of the United Nations. Under this agreement the United States acts as administering authority for the Trust Territory, which comprises the former Japanese mandated islands. The agreement came into force on July 18, 1947. The United States does not have sovereignty over Saipan by virtue of the trusteeship agreement. It is the view of the Department of State that Saipan is not a part of the United States, nor a territory or possession of the United States."

It will be recalled that this Government is a member of the United Nations and bound by its treaties.

We believe the decision of the Department of State is not binding on this Court, but certainly it should be given great weight.

MILITARY OCCUPATION DOES NOT MAKE IT UNITED STATES TERRITORY.

Mere military occupation or administrative occupation does not make a country part of the United States. If this is so, what about the western part of Germany, Italy, Belgium, Japan, the Philippines, etc.? They were all at one time occupied by our armed forces and they were under our administration. The western part of Germany and Japan still are. Yet it must be admitted that Japan, the western part of Germany, etc., are not a part of the United States, or its territory or possessions.

Strineri v. United States, 77 F. Supp. 241, was an action under the Federal Tort Claims Act. Strineri claimed jurisdiction because of our military occupation of Belgium. The Court held that the complaint did not state a cause of action, and that it had no jurisdiction because Belgium was a foreign territory within the purview of the Federal Tort Claims Act.

That Congress never intended this Act to apply to occupied areas such as Saipan, was recently demonstrated by it passing Private Law 396, 81st Congress—2d Session, Approved March 16, 1950. This Act compensated Mr. Findley for personal injuries caused his son by the operation of a Navy vehicle in Saipan. It seems obvious that Congress would not have passed such a private bill if the claim was within the purview of this Act. On the contrary, both the House and Senate Committees in reporting on this Private Law held that private relief was necessary.

WHAT LAWS GOVERN SAIPAN?

Saipan is presently administered by the United States Navy, and the laws, or probably more accurately, the rules, it promulgates govern the island. Congress passed no laws for Saipan; it has no legislature. The rules of the Navy are enforced by the Provost Marshal of the Navy.

If there is any law (in a judicial sense, not in its widest sense) that is applicable to Saipan, would it not be the Japanese law? Yet the United States definitely, under the Federal Tort Claims Act, decided that it would not be bound by any foreign laws.

In a footnote of *Spelar v. United States,* 338 U. S. 217, decided November 7, 1949, it is stated:

> "Local laws must be pleaded since the Federal Tort Claims Act permits suits only where the United States, if a private person, would be liable * * * *in accord with the law of the place where the act or omission occurred.*" (Emphasis ours.)

See

> 62 *Stats.* 933, 28 U.S.C. Supp. II, Paragraphs 13, 16(b).

The Supreme Court further stated:

> "* * * Congress was unwilling to subject the United States to liabilities depending upon the laws of a foreign power * * *. The present suit premised entirely on Newfoundland's law may not be asserted against the United States * * *."

ADJUDICATED CASES UNDER THE FEDERAL TORT CLAIMS ACT.

There are numerous cases involving this Act and its exception relative to foreign territory. As far as we know, they all uphold the Government's position. We cite briefly some of them.

Brewer v. United States, 79 F. Supp. 406. In this case the Court held that Okinawa was a foreign territory, and torts arising in Okinawa were not cognizant under the Federal Tort Claims Act.

Dunn v. United States (D.C., N.D. Cal.), ... F. Supp. ..... Here the Court held that Japan was a foreign country, regardless of the fact that it was occupied by the armed forces, and administered by the United States.

Brunell v. United States, 77 F. Supp. 68. In this action, precisely the same question was involved as in the present case before this Court, and the Court held that Saipan was a foreign territory.

United States, Petitioner, v. Lillian Spelar, as Administratrix of the Estate of Mark Spelar, Deceased, 338 U. S. 217, 70 S. Ct. 10 (supra). This case corrected its dicta (if it was) which misled a Circuit Court of Appeals to hold that the United States, by virtue of its ninety-nine year lease on property in Newfoundland, came within the purview of the Federal Tort Claims Act. It being a Supreme Court case, we believe it is controlling in the present case.

Celine Smith, etc. v. United States (D.C., N.D. Cal.), ... F. Supp. ....., held that Saipan was a foreign territory. The Court stated:

"The conclusion is inescapable that Saipan is, and was, at the time the injury occurred, a 'foreign country' within the meaning of 28 U.S.C. 943(k). Obviously Saipan is not, and never has been, a component part, or political subdivision of the United States, or one of its possessions * * *."

Other cases the Court may be interested in are:

Strineri v. United States, supra;
Fleming v. Page, 50 U.S. 603;
DeLima v. Bidwell, 182 U. S. 182.

ONLY CONGRESS CAN ADD TERRITORY TO THE UNITED STATES.

We believe that under our system of Government only Congress can add territory to the United States, but Congress has not added Saipan to the United States.

APPELLANT'S BRIEF.

The appellant has the burden of proof. He assumes this by starting with the following authorities: The Saturday Evening Post, "Howlin' Mad" Smith, and the Encyclopedia Britannica. We doubt that these are legal authorities, but as long as they are cited, perhaps the writer, who was in the United States Army at Saipan, may state (at least it has the virtue of not being hearsay) that he does not agree with General Smith that the Marines won the war, and will state further that he does not see how Saipan could ever become a state. The fish in the sea, the

rain in the sky, the coral in the island, on which is some sugar cane, compose the main characteristics and product of this island. It is believed that it could not support itself in the status of a state either economically, politically, intellectually, or otherwise. The few Micronesian natives (approximately 600), who inhabit the island, live on fish and a few simple agricultural products, with extra culinary appeal to the appetite on feast days through the medium of a pig or two. They are, however, appealing in character.

Perhaps an interesting development in this case was the announcement by the United States Department of Defense on May 17, 1950, of a plan that has been drawn by which Okinawa, which like Saipan is under provisional United States trusteeship, will be leased by Japan to the United States for air field storage and anchorage purposes, and the Ryukyu Islands will be returned to Japanese sovereignty and American troops withdrawn. The Court, perhaps, can take cognizance of this through the doctrine of judicial notice.

The appellant admits that the island is administered by the United States (Navy) under a trusteeship. Does it not then conclusively follow that it is a foreign territory?

In appellant's brief (page 4) he further admits that the proposal that Saipan be made an "integral part of the United States" (as Guam) was rejected, and the clause stricken. Common sense dictates then that in such a case it must be agreed it is not part of the United States.

A foreign country, as Justice Frankfurter says, is not a fixed and inclusive meaning. A foreign country in the days of Chief Justice Marshall does not necessarily mean the same today, but the meaning of a foreign country by Congress in passing the Act (as set forth in the *Spelar* case) leaves no doubt in our opinion that Saipan, under this Act, is a foreign country.

No cases under the Federal Tort Claims Act are cited by the appellant to uphold his contention, and we can find nothing in the appellant's brief to change the prior decisions of the Court.

Dated, San Francisco, California,
June 2, 1950.

Respectfully submitted,

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